



STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

Marissa P. Gillett, Chairman
John W. Betkoski III, Vice Chairman
Michael A. Caron, Commissioner

Energy and Technology Committee

Public Hearing, February 18, 2021

Testimony submitted and presented by:
PURA Position:

Marissa P. Gillett, Chairman
Support

Raised S.B. 858 – An Act Concerning Call Before You Dig Program Violations and Certain Modifications to Gas Pipelines Processes

Thank you for the opportunity to present testimony regarding **An Act Concerning Call Before You Dig Violations and Certain Modifications to Gas Pipelines Processes, S.B. 858**. The Public Utilities Regulatory Authority (PURA) welcomes the opportunity to offer the following ***supportive testimony***.

Section 1 - Call Before You Dig Program Violations

Background

Utility companies operate thousands of miles of underground wires and pipes in Connecticut that provide vital utility services including water, electricity, telecommunications and natural gas. If these underground facilities are broken by excavation activities, utility services could be lost, workers could be electrocuted, and gas leaks could lead to fires and explosions. The Call Before You Dig (CBYD) program is a free service that provides a link between excavators and utilities so that excavation can be done safely, preventing damage to the underground utilities. In order to protect the public from the inherent dangers associated with damage to underground utility facilities, a series of state statutes and regulations were established in 1977. Call Before You Dig, Inc., a non-stock, non-profit corporation, was the first statewide mandatory underground damage prevention program in the nation.

All owners of underground facilities are required to file information with CBYD pursuant to Section 16-347 of the General Statutes of Connecticut (Conn. Gen. Stat.) so that such information can be used to advise excavators when they call before they dig, as required by Conn. Gen. Stat. §16-346. Using computerized mapping and other state-of-the-art techniques, the excavation location is identified, the owners of facilities in the area are determined, and the excavator is notified of the utilities that will be required to “mark out” their underground facilities. Owners of underground facilities are then required to mark out their facilities within two working days pursuant to Conn. Gen. Stat. §16-351. Some owners choose to outsource this responsibility.

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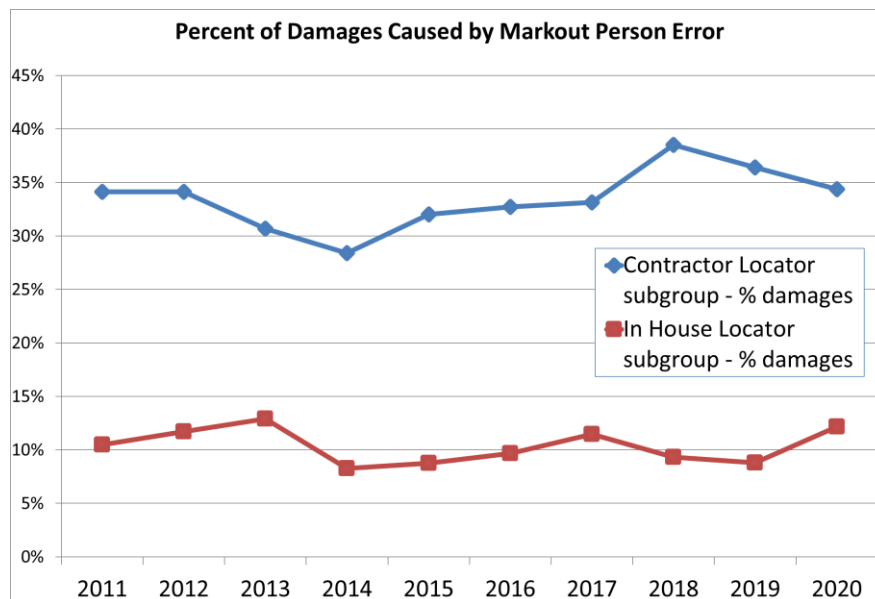
Safety Concerns and Violations

PURA is vested with the obligation to ensure that the CBYD rules are being followed, and must sometimes issue civil penalties to ensure compliance, as not every mark out is done on time or correctly. Utilities that perform this work in-house are already prohibited from recovering such civil penalties from their customers. Many utilities, however, outsource their CBYD associated locating responsibility and contractually require their subcontractor to pay all civil penalties assessed for violations. As a result, utilities that outsource this responsibility are effectively held harmless; they are not penalized if their contractors mark the utilities' facilities incorrectly. This transfer of risk to contractors allows utilities to avoid liability, which creates a misalignment of incentives for critical safety tasks.

Proposed Solution

This proposal would modify Conn. Gen. Stat. §16-356 to require that the regulated utilities pay any civil penalties assessed by PURA. The utilities would still be allowed (and encouraged) to continue to enforce contracts with their respective contractors by collecting the specified amount of civil penalties from the contractor. However, the party in violation would be required to forfeit the proceeds from those civil penalties in a manner to be determined by PURA. The Authority anticipates that recovered monies will be directed to a fund dedicated to educational campaigns involving excavation safety. By preventing parties from retaining reimbursed civil penalties, parties would no longer be able to outsource the liability.

Notably, Connecticut CBYD data collected over the past decade indicates that utilities who utilize company employees to perform mark outs have a lower percentage of damages attributed to mark out errors than those who hire outside contractors.



If passed, this legislation would improve excavation safety in several ways. It would incentivize utilities to hire high quality contractors for mark out functions and to maintain quality control programs for these tasks. Finally, in the unfortunate event of a violation, it would provide additional funding to education and outreach programs that will improve the overall CBYD program statewide.

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Sections 2 through 13 - Certain Modifications to Gas Pipelines Processes

Sections 2 through 13 of this proposed legislation are designed to strengthen, clarify and update PURA's gas pipeline safety authority.

The proposed statutory changes contained in Sections 2 through 7 would vest PURA with the same enforcement capabilities over municipal systems and propane operators that it currently exercises over public service companies. It is important to note that PURA already has jurisdiction over these entities; however, many statutes only apply to public service companies as defined in Conn. Gen. Stat. § 16-1, which excludes municipal systems and propane operators. PURA believes that, for reasons of public safety, it should exercise these statutory powers over all entities that are involved in the transportation of gas.

- a. Right of entry: Ensures the ability to inspect by expanding the scope of Conn. Gen. Stat. § 16-7 to include any person involved in the transportation of gas, as defined in 16-280a.
- b. Examination of witnesses and documents: Ensures the ability to examine witnesses and documents and perform management audits by expanding the scope of Conn. Gen. Stat. § 16-8 to include any person involved in the transportation of gas, as defined in 16-280a.
- c. Protection of employee from retaliation: Ensures there is no retaliatory action against any employees for disclosure of information by expanding Conn. Gen. Stat. § 16-8a to include any person involved in the transportation of gas, as defined in Conn. Gen. Stat. § 16-280a
- d. Expand the scope of Conn. Gen. Stat. § 16-11: Ensures the ability to issue orders related to safe operation of plant to all companies by expanding the scope of Conn. Gen. Stat. § 16-11 to include any person involved in the transportation of gas, as defined in Conn. Gen. Stat. § 16-280a.
- e. Reporting of accidents: Expands the scope of Conn. Gen. Stat. § 16-16 to require reporting from any person involved in the transportation of gas, as defined in Conn. Gen. Stat. § 16-280a.
- f. Imposition of Civil Penalties by PURA: Expands the scope of Conn. Gen. Stat. § 16-41(a) to include any person involved in the transportation of gas, as defined in Conn. Gen. Stat. § 16-280a.

Section 8: The Authority currently has the power to waive federal safety standards for pipeline safety. Section 8 of this proposal clarifies that the Authority also has the power to waive State pipeline safety regulations.

Section 9: Currently, Conn. Gen. Stat. §16-280c adopts all federal safety standards applicable to pipeline facilities and the transportation of gas. This may result in some unintended consequences, such as including the requirements for damage prevention contained in 49 CFR Part 198. The change proposed in Section 9 would clarify exactly which federal regulations are adopted as the standards of the state.

Section 10 of this proposal would revise Conn. Gen. Stat. § 16-280e to adopt the higher of the two maximum penalty amounts specified in 49 USC 60122(a) and 49 CFR 190.223(a). This change would allow PURA to maintain parity with increases to the United States Department of Transportation Pipeline and Hazardous Materials Administration's (PHMSA) civil penalty amounts, which are adjusted annually based on inflation. PHMSA is the entity responsible for gas pipeline safety at the federal level and assists with the funding of PURA's pipeline safety program.

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Sections 11 and 12 would allow the PURA Commissioners or their designees, which is expected to be the PURA Gas Pipeline Safety Unit (GPSU) – the unit that is responsible for pipeline safety and excavation damage prevention, to issue a stop work order during an inspection. Currently, there is no immediate remedy in cases where the GPSU witnesses unsafe practices during inspections.

The final proposed statutory changes, contained in Section 13, would repeal Conn. Gen. Stat. §§16-358 and 16-359. These two statutes are no longer necessary due to the subsequent adoption of other statutes, regulations and PURA orders that effectively implement these areas.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact Taren O'Connor at 860-827-2689 or taren.oconnor@ct.gov.